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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. JUAN E. LORA, Defendant and Appellant.	H023558 (Santa Clara County Super.Ct.No. C9929162)

Defendant Juan E. Lora appeals from the judgment entered following revocation of probation and sentence. He now complains of sentencing error.

BACKGROUND

In May 1999, defendant entered a plea of no contest to one count of infliction of corporal injury on a cohabitant (Noelia Ocampo) and one count of child endangerment.[1] (Pen. Code, §§ 273.5, subd. (a); 273a, subd. (b).) On June 18, 1999, imposition of sentence was suspended, and defendant was placed on four years' formal probation on condition he serve seven months in jail. A restraining order requiring him not to "annoy, harass, strike, threaten, sexually assault, batter or otherwise disturb the peace" of Ocampo was also a condition of probation.

[1] An additional count of false imprisonment was dismissed. (Pen. Code, §§ 236/237.)

On June 15, 2000, the probation department filed a petition for modification or change of terms of probation. The petition was based on a statement to the police from Ocampo, accusing defendant of physically assaulting her on the weekend of June 3 to June 5, 2000. Following a hearing, defendant's probation was summarily revoked and a bench warrant was issued. On August 13, 2001, the court revoked probation and sentenced defendant to the midterm of three years in prison. He now appeals.

The original charges arose out of an incident in May 1999, during an argument at the home defendant shared with his girlfriend Noelia Ocampo and her children. Defendant seemed to be under the influence of drugs and was yelling and throwing things. He grabbed Ocampo by the hair and throat while she was holding her seven-month-old baby. He hit her three times in the face with his closed fist and then kicked her so she fell down on the baby. She suffered scrapes and bruises and her child sustained a 1.6 inch scrape on the head.

Then in June 2000, while defendant was on probation, he and Ocampo and her three children left the homeless shelter where they had been staying and stayed in a motel for the weekend. Defendant used drugs, the two argued about her having an affair and he hit her in the face and stomach and threatened to kill her. Her five-year-old son was present and saw defendant punch his mother. After the family returned to the shelter, Ocampo reported the incident to shelter workers and they called the police and told defendant to leave.

Defendant's probation was revoked following a hearing where the police officer and the shelter workers testified. Defendant had left the area and did not appear at the hearing.

After defendant returned and turned himself in, he was sentenced. At the hearing, he testified that he did not hit Ocampo and she injured herself. Defendant's probation officer testified that defendant had performed well on probation until the June 3, 2000

weekend. After that, he failed to report, failed to pay fines or to complete any required classes.

DISCUSSION

On appeal, defendant contends the trial court erred in sentencing him to the middle term of three years. He asserts that the court erroneously relied on aggravating facts which occurred during probation.

After finding defendant in violation of probation, the court stated: "[I]t is close between the mitigated and middle term. . . . But the violence is a little bit, a lot more extreme than what I thought. And it is the level of violence that takes it out of the mitigated term and puts it into the midterm. And it is close, I understand that, Mr. Lora, that you have done a lot in the county jail and I do really like the inmates' programs and do like to give defendants credit for participation in those programs. [¶] It is because it has been the same victim for a while now and the acts of violence are serious and that concerns me too, and so that's why I will give you the middle term."

It is well established that trial courts have wide discretion in making sentencing choices, especially when weighing aggravating and mitigating factors, and as a reviewing court we must affirm "unless there is a clear showing the sentence choice was arbitrary or irrational." (*People v. Oberreuter* (1988) 204 Cal.App.3d 884, 887, disapproved on other grounds in *People v. Walker* (1991) 54 Cal.3d 1013, 1022.) The pertinent rule of court provides: "The length of the sentence shall be based on circumstances existing at the time probation was granted, and subsequent events may not be considered in selecting the base term . . . ." (Cal. Rules of Court, rule 4.435(b)(1).) In addition, the trial court must choose the middle term unless the court finds circumstances in aggravation or mitigation. (Pen. Code, § 1170, subd. (b); see *People v. Reeder* (1984) 152 Cal.App.3d 900, 923.) No statement of reasons is required for imposing the middle term. (*People v. Keeton* (1992) 10 Cal.App.4th 1125, 1131.)

Here, in its remarks, the trial court mentioned defendant's rehabilitative jail activities, but did not specifically find that to be a mitigating factor. More importantly, the court stated that the level of violence negated any mitigation. The court did not state, as defendant assumes, that it was considering or referring to the June 2000 acts of violence. In fact, the original charges concerned violence causing injuries to both the victim and her child. We presume the trial court correctly followed its obligation to base the sentence on the original acts of violence.[2] (See Evid. Code, § 664.)

In the respondent's brief, the Attorney General argues that defendant has in fact waived any objection to his sentence because he failed to make a specific objection below to either the sentence itself or the statement of reasons. (See *People v. Scott* (1994) 9 Cal.4th 331, 353-354; see also *People v. de Soto* (1997) 54 Cal.App.4th 1, 9 [objections must be sufficiently specific to provide trial court meaningful opportunity to correct error, or they are waived].)

At the hearing, trial counsel argued for imposition of the mitigated sentence, but did not expressly or specifically object to the court's reasons for imposing the middle term. On appeal, defendant has raised an alternate ineffective assistance of counsel claim if we consider his objection waived. But as we have determined the trial court did not err, no additional discussion is necessary.

DISPOSITION

The judgment is affirmed.

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[2] We do not read the court's reference to the victim being the same as an inappropriate reliance on the June 2000 acts of violence for sentencing purposes.

Wunderlich, J.

WE CONCUR:

Premo, Acting P.J.

Elia, J.